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ABSTRACT

In the late 1980s and 1990s, states began working to decrease the level of regulation of public education, using a variety of approaches to regulatory flexibility. This paper examines the evolution of deregulation, from limited waiver programs to charter-school plans and new performance-based accountability systems that include broad-scale deregulation. Data were collected through telephone surveys and personal interviews with central office staff, building administrators, and teachers in South Carolina, Washington, and Texas. A survey of 50 state deputy commissioners of education was also conducted. Findings indicate that only certain schools were eligible for regulatory exemption. Schools attained eligibility as a reward for high achievement, through a competitive selection process, and/or because they survived detailed changes in plan/application processes. Waivers were restricted to certain types of regulations, and statutes were eligible for waivers only with the express sanction of the legislature. Each of the waiver programs was associated with some promising changes in schools. However, the role of deregulation is difficult to sort out from other variables. One of the most important effects of deregulation for school-level respondents was the removal of regulation as an excuse for traditional practice. Barriers to deregulation included lack of outcome measures, politics, equity concerns, and nonregulatory constraints. Persistent problems of state policy included the "bad apple mentality," constituency politics, and "the limited toolbox." Recommendations include: (1) view deregulation as one of many policy approaches; (2) develop accountability and incentive structures to promote continual progress; (3) develop criteria for the rationing of regulations; (4) develop a broader toolbox of policy approaches; (5) create new approaches to help problem schools; and (6) study the political, technical, and ethical issues that influence regulation. The appendix contains the interview protocol. Contains 35 references. (LMI)

CONSORTIUM FOR POLICY RESEARCH IN EDUCATION

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Ruling Out Rules:

The Evolution of Deregulation in State Education Policy

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Richard F. Elmore

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Ruling Out Rules:

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March 1995

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Abstract

In the late 1980s and mid-1990s, states began working to decrease the level of regulation of public education. Operating under the assumption that greater school autonomy is an important spur to school improvement, policymakers tried a variety of approaches to regulatory flexibility.

This paper examines the evolution of deregulation from limited waiver programs to charter programs and new performance-based accountability systems that include broad-scale deregulation. Early deregulation programs were so limited in design that they had very modest results, but policymakers are finding expanded efforts very difficult to achieve. Many of the same political forces and habits of practice that limited early efforts continue to pose barriers to deregulation. Underlying the barriers is an historic, continuing uncertainty about the state role and about how states should relate to districts of varying types.

The findings reported here are based on several sources of data collected between 1990 and 1993. CPRE researchers conducted telephone surveys and face-to face interviews with central office staff, building administrators, and teachers in South Carolina, Washington, and Texas. They also surveyed 50 state deputy commissioners of education (or their delegates).

Only certain schools were eligible for regulatory exemption. Eligibility rested on one or more of three criteria. Schools were high achievers and deregulated as a reward, selected to participate through a competitive process, and/or survivors of a detailed change plan/ application process.

Waivers were restricted to certain types of regulations, and statutes were eligible for waiver only with the express sanction of the legislature. Each of the waiver programs was associated with some promising changes in schools. However, effects must be characterized as mixed because the role of deregulation is difficult to sort out from other variables. One of the most important effects of deregulation for school-level respondents was the removal of regulation as an excuse for traditional practice. As one respondent reported, "Symbolically, the waivers allowed things to be turned over to the teachers, to be free to think about whatever, when developing the proposals. In my school teachers began to think they could do anything."

Biographies

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Introduction

In the mid-1980s, states began experimenting with the elimination of regulation in education. Policymakers were influenced by prestigious national reports urging school discretion as a means of enhancing teacher professionalism and improving school performance (e.g., Carnegie 1986; Holmes 1986). Support of school-based innovation was also in part a counterbalance to earlier policy efforts that were heavily state driven and directive. As part of the promotion of local innovation, states permitted schools to seek waivers from regulation. Between the late 1980s and the mid-1990s, they tried a variety of approaches to regulatory flexibility, gradually seeking to broaden the extent and scope of deregulatory efforts.

The push toward flexibility stems from the belief that autonomy is an important spur to school improvement (e.g., see Purkey and Smith 1983). Freed from barriers posed by rules about how they organize and deliver education, schools could design services that best meet the needs of their students. Instruction could be tailored to local situations; instead of politically derived mandates; pedagogical and curricular interests could drive decisions about practice. In the absence of external regulations devised by policymakers and bureaucrats, decisions would be made by those closest to the students and those with the most expertise—professionals at the school site. To foster such discretion, policymakers have offered a "horse trade": educators agree to be accountable for performance in return for deregulation (NGA 1986). Supporters of deregulation also cite the increased effectiveness associated with corporate efforts to devolve authority (e.g., Mohrman 1994) as well as popular support for more limited government.

In this paper, we examine the evolution of deregulation from limited waiver programs to charter programs and new performance-based accountability systems that include broad-scale deregulation. We argue that early deregulation programs were so limited in design that they had very modest results, but that policymakers are finding the broader efforts very difficult to achieve. Many of the same political forces and habits of practice that limited the early efforts continue to pose barriers to deregulation. Underlying the barriers is an historic, continuing uncertainty about the state role and about how states should relate to districts of varying types.

Our findings about deregulation are based on several sources of data. After a survey of principals in the 125 schools initially eligible for waivers in South Carolina, CPRE researchers visited four elementary, an intermediate school and a high school, all deregulated, in two districts in that state. Researchers visited these districts three times between 1990-1992. Interviews were conducted with central office and building administrators and with three to seven teachers in each school. Interviews with administrators and teachers in three sites eligible for waivers in Washington were conducted over the same period. In 1993, a telephone survey of project coordinators in all eligible sites was

conducted. Teachers and administrators in seven schools eligible for waivers in Texas were interviewed either in 1992 or 1993. Interviews were also conducted with state policymakers, association leaders, analysts and agency personnel in each state. In the spring and summer of 1993, a survey of the 50 state deputy commissioners of education (or their delegates) was conducted (see Appendix A for the survey instrument).[1]

The next section of this paper deals with the waiver efforts that we have been studying in South Carolina, Washington, and Texas over several years. The second section concerns broader deregulatory strategies, and examines the challenges states report in developing and implementing such strategies. The third section focuses on the continuing problems states face in developing constructive stances toward local districts and schools. Finally, we turn to the policy implications of these findings.

[1] Patricia Fry and Paul Nolan assisted with field work in South Carolina. Fry and Jane David participated in Washington state field work. The 1993 surveys of 21st Century School sites and of state agencies were conducted by Beverly Hetrick. John Supovitz conducted the 1993 field work in Texas.

Early Efforts: Limited Design; Limited Effects

Waivers, or exemptions from regulation, have traditionally been used to give districts facing emergency circumstances some latitude or additional time to come into compliance. Typical waivers dealt with the length of the school year, lifting minimum requirements in case of bad weather or other unavoidable crises, and with teaching out of field, permitting districts to staff classes when properly certified teachers were unavailable.

By the late 1980s, when the so-called "second wave" of school reform put an emphasis on school autonomy, states began to offer waivers explicitly to promote innovation. The programs that we studied in South Carolina, Washington, and Texas are fairly representative of early efforts to promote innovation through waivers. The programs were quite limited in their design. The fact that they had modest effects on school practice after several years of operation reflects their modest aspirations.

In 1992, we reported that the South Carolina and Washington efforts were stimulative of some broader thinking about school organization and practice but that other factors, such as associated monetary awards and the local context, were as central as the waivers to the changes schools were undertaking (Fuhrman and Elmore 1992). We thought it would be important to follow the eligible schools over time to see if waiver use, or the changes encouraged by deregulation multiplied as schools became accustomed to freedom and to non-traditional ways of operating. The time variable seemed critical since the initial effects of the programs were fairly limited. We now believe that program design and the continuing force of tradition are more influential than the length of time schools operate with regulatory flexibility. The programs were limited in two ways—in their definition of eligibility and in the rules which might be exempted. Their effects are similarly moderate; with respect to the programs we studied, there was little indication that deregulation becomes more of a stimulus to change in individual schools over time.

Limited Eligibility

In the programs we studied, only certain schools were eligible for regulatory exemptions. Eligibility rested on one or more of three criteria. Schools were high achievers and were deregulated as a reward, selected to participate through a competitive process, and/or survivors of a detailed change plan/application process.

In South Carolina, all three criteria were used to deregulate schools. The Flexibility Through Deregulation (FTD) Program provided automatic exemption from a body of rules in the state's Defined Minimum Program (DMP) to schools that won School Incentive Grant rewards twice over a four-year period. These were schools that were high performers on standardized tests, relative to schools similar in socio-economic status. Between enactment

of the program in the state's 1989 Target 2000 reform and 1994, 245 schools (more than one-fifth of those in the state) received deregulated status. Target 2000 also included school innovation and dropout grants, awarded on a competitive basis. Schools selected under these programs could request waivers of individual regulations, or rule-by-rule waivers, although few did (Fuhrman, Fry and Elmore 1992). Finally, after complaints that these programs could not serve all who wished waivers, the state board instituted a restructuring program. Under a proposal, negotiation, and approval process that included review of specific waiver requests, 106 schools received restructuring waivers through 1993.

In Washington, we studied the Schools for the Twenty-First Century Program, a competitive grant program to encourage school restructuring. The program provided funding to offer supplemental contracts to school employees for a maximum of 10 additional days beyond the school year and waivers upon request for rules deemed to impede implementation of a proposed program. Districts and collective bargaining units, from whom projects might also request waivers, were required to assure cooperation with the project. Waivers granted are to continue throughout the six-year duration of the program. Thirty-three sites (7 districts; 26 schools) participated in the program by 1994, having gone through one of two competitive selection rounds which together drew 236 proposals.

At the time of our study, Texas had several approaches to waivers. In its first year of operation (1992-1993), the Partnership School Initiative (PSI) included 83 schools (half elementary; one-quarter middle schools; and one-quarter high schools) chosen through a proposal process. Approximately 2,500 schools, more than one-third of the campuses in the state, responded to an initial invitation from then Commissioner Meno; the selections were made by the 20 regional service centers, with desire to innovate as the primary criterion. According to a Texas Education Agency (TEA) official, "[We] were looking for schools that had instructional leaders, a principal who had a vision, who actually wanted to do something with this program, a campus faculty and staff that was committed to these ideas and wanted to work with this person [the principal], a central administration and board that were supportive of these ideas, that would allow these things to happen, and a community that bought into it." In addition to eligibility for waivers, the Partnership Schools had the assistance of a coordinator at the regional center who brokered services, and they received personal attention from top state officials who visited and spotlighted the PSI sites.

Texas also had an Innovative Grant Program, legislatively delegated to the Educational Economic Policy Center at the University of Texas at Austin, which provided grants and, in some cases waivers, to selected schools. These schools were primarily low performing with large at-risk populations who must apply to the center to participate. In 1993-1994, 27 innovative grants were given (14 of these sites also sought waivers); an additional 31 sites were granted waivers without money. Finally, and in keeping with a recent trend to broaden eligibility for waivers, discussed later in this paper, any school could write an application to the Texas Education Agency for a waiver, having demonstrated faculty involvement, the approval of the principal, the superintendent, and the local board.

Schools that received waivers through the variety of routes constructed by the three states were primarily successful schools. Although, of the programs discussed, only the South Carolina FTD program limited eligibility to high test scorers, all the routes required some degree of skill and negotiation on the part of schools and districts. Either they won a very competitive monetary reward, as in the case of the 21st Century Program and Innovative Grants in South Carolina and Texas where only 10 percent or less of the applicants were chosen, or they went through a paperwork proposal/approval process requiring demonstration of a plan to use the waivers for school improvement or innovation purposes. The schools that succeed in getting waivers under these circumstances must be considered entrepreneurial to some extent. They are special in some fashion, if only with respect to perseverance, and the use they make of the waivers must be seen in that light.

Limits on Rules to be Waived

In each of the approaches to waivers just discussed, waivers were restricted to certain types of regulations, and statutes were eligible for waiver only with the express sanction of the legislature.

South Carolina's FTD offered the broadest approach to deregulation. Eligible schools received automatic exemption from many of the regulations in the state's DMP. The removed regulations generally concern class scheduling, class structure, and staffing. For example, while a minimum six-hour day for elementary students was still mandated, requirements about the maximum times for lunch and the circumstances under which activity periods count as instructional time were removed. Time allocations in subject areas were completely eliminated although instruction had to be provided in each subject. Teachers had to be certified, but not necessarily in the subjects to which they are assigned. The FTD's "blanket waiver" approach to removing a set of intersecting rules is very liberal; the other South Carolina programs required sites to specify and justify the individual rules they wanted waived. But even the FTD excluded some important rules from the waived list. High school graduation requirements and standardized testing requirements remained in effect as did regulations affecting some special need programs, such as gifted and talented education. In fact, a major complaint of some participating schools concerned the maintenance of a class size cap for gifted and talented while general class size limits were lifted.

In Washington's Schools for the 21st Century Program, regulations eligible for waiver were specifically listed. Waivers could be related to "the length of the school year, teacher contact hour requirements, program hour offerings, student to teacher ratios, salary lid compliance requirements, the commingling of funds appropriated by the legislature on a categorical basis for such programs as, but not limited to, highly capable students, transitional bilingual instruction, and learning assistance." (Washington State Senate 1987). Again, graduation requirements and testing requirements remained in effect. Furthermore, a number of project sites reported that requested waivers were denied by the state. Three of the 13 elementary school projects reported applying for waivers that were not approved, as did

three of the middle school/junior high projects, two of the high school projects, and one district project. Some of the denials reflected concern by the state over potential implications of the waiver request for serving special need children also served by federal programs, even though the program included a pledge to seek federal waivers. Even more chilling than actual denial was the perception that applying for waivers was a hassle, not worth the effort. Seven of the 33 sites reported that they feared the bureaucratic hassles, such as identifying and linking codes and regulations to specific project goals. Many felt that their actions were restricted by aspects of policy that were not waivable, such as the finance formula which drives staffing ratios.

Texas' waiver programs had similar restrictions. The Commissioner's waiver authority for Partnership Schools and for general applications was *not* extended to the following areas: curriculum essential elements; restrictions on extracurricular activities; health and safety; competitive bidding; elementary school class-size limits; minimum graduation requirements; removal of disruptive students from the classroom; suspension or expulsion of students; at-risk programs; pre-kindergarten programs; employee rights and benefits; special education or bilingual education programs; and federal rules and laws. Only the schools supported by the Innovative Grant Program were not restricted by the list of unwaivable regulations. Furthermore, all requests for waivers from use of state-adopted textbooks had to be funneled through the TEA's waiver unit, even for Partnership Schools, which could receive other waivers directly from their local Education Service Units.

By limiting the rules eligible for waivers, states took a cautious approach to regulatory flexibility. In addition to protecting health, safety and civil rights, states maintained regulations concerning fundamental expectations, such as graduation requirements or mandated essential curriculum elements. Policymakers saw course and curriculum requirements as important expressions of school responsibilities. While class size requirements could be waived in some cases, in every state there was some restraint on class size that remained in force. Furthermore, the limits indicate reluctance about deregulating special need programs, perhaps because of concern over impinging on federal programs (GAO 1993; Hetrick 1994) or strong constituencies.

While the rules eligible for waiver include important aspects of practice, particularly relating to the use of school time, the fact that most statutes and many regulations may not be waived casts an aura of tentativeness and hesitancy over these programs. The sense that these programs, for the most part, were "dips" rather than "plunges" into the waters of regulatory flexibility, may have something to do with the rather tentative and hesitant response of participating sites.

Limited Effects

Each of the waiver programs was associated with some promising changes in schools. However, as we discuss in the following paragraphs, effects must be characterized as mixed

because the role of deregulation *per se* is difficult to sort out. Not only were many post-waiver activities possible prior to the deregulation effort, but also other factors appeared to outweigh the presence of deregulation in explaining schoo' response. Furthermore, many of the waivers concerned one specific area of school operatic ns: the use of time. While ability to manage time is clearly central to the innovations undertaken, much rearrangement of the school day led to less instructional time. In a number of cases, it appeared that waiver use was more a way to cut fiscal corners than a spur to creativity.

Benefits of Deregulation. In each state, schools operating with waivers undertook interesting activities, many of which focused on interdisciplinary and multi-age instruction. In South Carolina, deregulated schools were integrating subjects, for example, by blending math and science or developing thematic units of study. They were adding programs, such as additional art and music or foreign language in early grades. Some were developing ungraded primary schools for grades K-3 (Fuhrman, Fry and Elmore 1992). In Washington, four sites were moving from seat time to outcomes-based approaches to determining student progress; three were experimenting with off-campus learning through options such as community service; three were using interdisciplinary approaches to course development. One district-wide project set up a network of schools involved in restructuring and site-based management. Texas Partnership Schools were exploring a wide variety of reform options, including Accelerated Schools, outcome-based education, community instruction, mixed age grouping, critical thinking, Glasser's Quality Schools, extended grading periods, authentic assessment, and portfolio assessment.

Across the states, participants linked these activities directly to deregulation in two respects. First, in these programs, deregulation puts a spotlight on eligible schools, creating some expectations and some pressure for innovation. For example, one South Carolina administrator said that even three years into the program, "deregulatory status creates an expectation for change, [a] pressure for them to do something." He told of a very conservative principal who became an advocate for middle school reform because he was "expected to innovate" and therefore was more "receptive to the new middle school concept." A Texas Partnership Schools Coordinator said that Partnership Schools "...are basically going to be living in a fishbowl. People are going to be watching you constantly. People will be visiting your campus constantly."

Second, and more important to school-level participants, is the liberating effect of deregulation on school-level planning. As a South Carolina teacher said, "Deregulation enables us to focus on what's best for the kids."

Many respondents, in words so similar they could be interchanged across states, said the liberation comes primarily through the removal of regulation as an excuse for traditional practice. Once the justification of rule is erased, deregulation illuminates other barriers to change, forcing schools to at least confront them, and, hopefully, to deal with them. From a South Carolina principal: "Waivers have created a climate so that regulations are not a hindrance. We don't feel like our hands are tied; [we're] excused from DMP. People here

can't say we can't do it because...we can." From a Washington 21st Century site coordinator: "Symbolically, the waivers allowed things to be turned over to the teachers, to be free to think about whatever, when developing the proposals. In my school, teachers began to think they could do anything..." According to a state report on the program, sites were able to specify many factors other than regulation that hindered change efforts. For example, teachers from eighteen of the 33 sites cited the challenge of developing a consensus for change among faculty and parents as either the primary or one of the top two barriers to innovation. Lack of time to accomplish meaningful change was a critical problem (Washington State Board of Education 1993). Finally, in Texas, a principal said, "I think the waivers and the Partnership have been the only thing that has forced all of my teachers to start looking at what they are doing, because...now they have no excuses for the lack of achievement.... And so now about the only thing they can still do is to blame the home environment. And I still have got a few trying to do that. Other than that, they have got to look inward."

Perception of Regulatory Barriers. The corollary to discovering that waivers clarify real barriers to change is the realization that regulations themselves do not pose the hindrances popularly ascribed to them. In each state, schools undertook activities that were in fact possible before regulation, but not undertaken predominately because of ignorance about what was actually required or proscribed. Respondents to a survey of South Carolina FTD schools shortly after deregulation began reported that about half the activities they were pursuing might have been undertaken before, primarily by designing them in a way that would comply to the DMP (Fuhrman, Fry and Elmore 1992). A Washington state official reported that "one discovery was that many of the things we thought were barriers were not. We can do much restructuring of the school day or year under the existing laws." And, in Texas, a kindergarten teacher in a Partnership School reported:

> We thought we were going to need lots of waivers, and that being a PSI school was going to facilitate that, and would help us know the things we needed waivers for. And the thing that was real shocking was finding out that we didn't need waivers for most of the things we wanted to do. What really scared me about that was finding out all the things that we think we have to do, and it is just your district's interpretation, or it's just the way it has always been done. And if you read the rules and read the laws and read the regulations, you don't have to do that, but nobody knows.

State regulation may turn out to be less restrictive than imagined because other factors—local board policies, union contracts, and non-educational mandates (e.g., federal requirements for asbestos removal, state restrictions on purchasing and bidding)—reinforce and interact with regulations to create a restrictive climate. School personnel frequently do not know the source of restriction and blame regulations that are revealed by waivers not to be the real culprits. Furthermore, all these other policies and the state regulations up for waiver are deeply intertwined with tradition. In large measure, people interpret rules in ways

that reinforce the status quo. Removing the rules does not necessarily expand the organizational, structural or instructional options horizons of teachers and administrators. It is noteworthy that the experience of recognizing the force of tradition, as opposed to rule, is common across states with widely varying regulatory climates. Washington is a relatively weak regulator, despite many teachers' perceptions to the contrary, and South Carolina is historically a strong regulator (Fuhrman and Elmore 1992). Texas falls in between, having been a local control state by tradition until the 1980s when it became known for the volume and directiveness of its mandates (Picus, Hertert, and Van Kirk 1993). Apparently, no matter how regulatory the state, the regulations are never as extensive or onerous in reality as they are in imagination.

The impact of rule removal in these programs appears to be as much symbolic as real. This finding is reinforced by participant testimony about the wealth of other factors that influence their innovations. These factors fall into three categories: other aspects of the regulatory flexibility program; local district support; and entrepreneurial leadership.

Other Factors Influencing School Response to Deregulation. Most of the deregulation programs included a number of components in addition to waivers. In many cases, these other components had important influences on the activities schools undertook. For example, in Washington, Twenty-First Century Schools received funding for 10 extra days for staff supplemental contracts. This aspect of the program was consistently rated by participants as the most valuable, enabling schools to provide professional development and to plan their activities. The 10 days were seen as more critical to the success of the projects than the waivers or the assistance aspects of the effort (Washington State Board of Education 1993). In Texas, PSI schools had the support and attention of a regional coordinator, serving as liaison to the larger educational community, exploring existing research and programs for school consideration, arranging for teacher development workshops, and brokering other sources of assistance. Such highly focused, individualized attention—each coordinator in most cases has only four Partnership schools—is unique in this large state. Considering that other schools also could get waivers on request, the cachet of being a PSI school and the coordinator support were likely to be more meaningful to PSI schools than rule exemptions. Even though PSI schools could get waivers from regional coordinators instead of the TEA, the time saved was minimal as the TEA waiver unit was turning around requests within 30 days. TEA staff responsible for regional units do not believe that Partnership Schools ask for more waivers than non-PSI schools.

Local district stance toward flexibility goes a long way toward explaining the extent of activities deregulated schools undertake (see GAO 1994 for similar findings). An example concerns a South Carolina school that switched to whole language instruction and incurred test score declines on basic skills reading tests. The declines caused the school to lose its automatic eligibility for deregulation. Under the FTD program's provisions, schools could apply for extensions of deregulated status beyond the eligibility period. The school did so, with the district's full support. According to the principal, "The district was very supportive—

you could not ask for more...we're not going back to phonics—they will have to do more than take us off deregulation to appease the testers."

In Washington, some districts provided money and other kinds of services to support the 21st Century projects. One district supplemented funds by $32,000 the first year, $18,000 the second year, and $9,000 each remaining year. Several others absorbed the costs of releasing teachers to participate in project activities. Representatives of 10 of the sites reported that local bond levies were passed for technology during the course of the project, with the additional monies used to support the 21st Century effort. Unions also provided reinforcement. In general, local teacher associations were positive, participating in planning efforts and supportive of waiver requests.

On the other hand, nine 21st Century project liaisons said that lack of local support was the reason they had not taken advantage of deregulation. They reported district resistance to altering schedules because of transportation arrangements and concern about non-project schools perceiving local flexibility as preferential treatment.

Schools that tended to use deregulation were also likely to have many other kinds of innovative activities and projects in place. For instance, one South Carolina school participated in the state's experimental assessment program, the school improvement consortium, and the International Reading Association exemplary program award; it also offered numerous instructional innovations like Writing to Read and Reading Recovery. A central office respondent said of this school, "They are...in a lot of projects. They have demanded it and worn a badge on their sleeve. Aggressive, confident, wonderful faculty." Nineteen of Washington's 21st Century schools reported a range of funding sources outside the local and state agencies, including colleges and universities, local foundations, museums, and business. One district site, located near wetlands, had collected over $700,000 from the Interagency Council on Outdoor Recreation, $30,000 from the Coastal Management Zone, $105,000 from the Aquatic Lands Enhancement Account, and $500,000 from the legislature to develop a nature center for environmental study. Similarly, a Texas Partnership School was working with three colleges and government officials on the issue of water quality. Its goal, which was also supported by an innovative grant, is to be involved with building and running a water treatment plant.

Schools that are entrepreneurs take advantage of deregulation much like they do of other sources of support. Deregulation was generally crafted like a project grant—i.e., granted for specified purposes through some sort of competition or application process—so it's not surprising that it was treated as such. Schools likely to greet deregulation with enthusiasm used it as an additional opportunity to enrich school programs that were probably already fairly innovative.

Waivers and Time Use. In a number of instances, waivers supported new approaches to arranging the school day. In South Carolina, schools cited the DMP time requirements as the greatest barriers to innovation before deregulation, and as a result of the FTD program,

they relaxed conformance to required minutes of instruction through interdisciplinary approaches and new schedules (Fuhrman, Fry and Elmore 1992). A fifth-grade teacher attested to the importance of the time deregulation:

> We try to stay not within strict minute guidelines like we used to, but within the idea of covering everything. For example, one day we may spend one and one-half hours on language; the next day a half an hour. This has happened only since deregulation. They were real strict about it before.

In Washington, 17 of the 29 waivers granted over the period of study related to time. They dealt with teacher hours, length of school day, length of school year, program requirements specifying time, and classroom teacher contact hours. These waivers permitted schools to increase teacher planning and training time during the school day; while the 10 additional days the program provided were appreciated, they took place before and after regular school hours.

In Texas, waivers granted by the TEA in 1992-1993, from least to most popular, were as follows: less than 1 percent of total waivers granted dealt with PE; 1 percent with gifted and talented education; 2 percent with certification; 4 percent with textbooks; 5 percent with the Teacher Appraisal System; 10 percent with class size; 15 percent with final examinations for high school seniors; 21 percent with course requirements; and 37 percent with reducing the mandatory number of school days by up to 6 days to provide staff development. The remainder were reported as "other" by the Texas Education Agency. Waivers for the PSI schools concerned staff development for the most part. In 1992-1993, 82 of the 83 PSI schools received waivers to reduce the student school year to provide staff development days, which for them can number as high as 15. Sixty-one, or 74 percent, took more than the 6 days available to non-PSI schools.

Enhanced staff development, including ample time during the work day for teacher learning, is a central thrust of current reform efforts (Little 1993; Corcoran 1994). It is clear that the dramatic improvements in teaching and learning envisioned by reformers will not take place without substantial investment of resources and time in this activity. Nonetheless, the provision of professional development at the expense of student instructional time, as made possible by waivers in Washington and Texas, poses a difficult tradeoff. Some PSI school staffs were even worried at first that if schools were closed to students to make time for staff development, the children depending on breakfast and lunch programs would not be assured meals, much less much needed teacher attention. Furthermore, using waivers instead of funding extended contracts or release time to provide for professional development suggests that cutting corners is an important motivation. The Texas PSI program was proposed by the Commissioner after the legislature rejected his proposal to add days onto the school year for staff development. In Washington, a site coordinator implied that these kinds of waivers were less than substantive:

> We found that the Governor's budget meant that you could make any changes as long as they didn't cost any money. There were a lot of *McWaivers* which rearranged the existing time.

Use of Waivers Over Time. Additional indication that deregulation associated with these programs had relatively modest effects is provided by the weak influence of deregulation on changes in participating sites over time. In Washington and South Carolina, the two states where waiver programs have been in existence for several years, evidence that waivers lead to cumulative change is hard to find. Despite expectations, there was virtually no increase in waiver requests from 21st Century sites over time. Two districts did apply for waivers after a period of time; the requests concerned reducing the school year to offer more staff development. More often, waivers that were originally requested, even though they were relatively small in number, were not used.

In South Carolina, where some schools seemed to become more and more adventurous over time, the changes might be attributed to many factors, not just the waiver programs. For example, a principal in one of the most innovative schools cited the budgetary control coming through locally initiated site-based management as important in reinforcing the regulatory freedom. She also said that teachers have gotten more and more involved in planning, more focused on student learning and more willing to experiment with changes in schedule. But this was a school that had never felt bound by the DMP, even before deregulation. As a teacher there put it:

> We used to break the DMP law. We used to teach reading and not much science or social studies. We knew what we were supposed to be doing; but [eventually we] made a decision not to do it. We talked to previous school and district leadership and to the state and told them how we felt about the DMP in early grades.... So we were delighted when it finally became legalized.

Two other schools, an elementary and a high school, making creative use of waivers through interdisciplinary team teaching and different scheduling, cited many other factors in addition to deregulation as supportive of change: grant funds, university assistance, district support for risk-taking and assistance in changing curriculum and assessment, and, according to the teachers, principal leadership. A principal at a fourth school, another elementary, in the same district said the school had not benefitted from deregulation as much as it could and had made few changes over the years since initial deregulation: "People still have the old mindset and letting go may be difficult. It hasn't changed anything drastically, but the teachers feel somewhat freer. The only way to really free up the teachers is through staff development and learning new knowledge." A teacher concurred that, "deregulation made no big difference."

Schools in a second South Carolina district, which had relatively conservative central office leadership until recently and is facing pressures from fast-growing enrollment, also made limited use of deregulation. The use had not broadened considerably over the initial

years of deregulation. A middle school principal cited an at-risk program that has a special schedule, but the teacher coordinating the program said it would have been possible before deregulation. Team leaders in the school indicated that the push toward teaming reflected the middle school movement, not deregulation. One said: "If we wish to alter the time schedule—take them on a field trip or double period—we can, but this is not in our consciousness." A high school administrator said, "We have not gone off the deep end with deregulation because it's a conservative community and we don't have money for some things like ungraded schools...and authentic assessment. We don't have the time." Many other changes related to new curriculum materials and approaches, the state's alternative assessment experiment, and new central office leadership were taking place in these schools; deregulation was just a small part of the picture. According to a mathematics teacher, the community's interest in traditional measures of performance kept the school from taking fuller advantage of deregulation: "We could have changed the number of minutes in a period, doubled some subjects and so forth, but this is a fairly conservative community and school. We want to keep doing whatever we are doing right, such as high SATs."

These patterns suggest that deregulation may exert its primary effects initially, when a school first becomes deregulated, at least in the case of schools eligible for special flexibility programs. The spotlight due to the honor of participation in a special program and the liberation of "no excuses" planning occur mostly at the beginning of a deregulation effort. It appears that the contextual, community, and leadership factors that account for much of the variation among deregulated schools also influence the extent to which schools use deregulation over time to deepen and expand the degree of change.

Summary. The modest effects of early deregulation programs reflect their design and difficulties in overcoming deeply ingrained traditional behavior. It's not surprising that relatively successful schools, to whom eligibility was generally limited, did not find much need to embark on wholesale change, and used deregulation as one of many resources to support innovation. It's not surprising that programs carefully crafted to preserve many key regulations invoked limited responses. It's not surprising that the inertia in the system, reinforced by all the policies from various levels of government, tended to overwhelm nascent state deregulatory efforts. And finally, it's not surprising that states are now trying to broaden their deregulatory approaches beyond modest programs that were something of a disappointment. The next section turns to current efforts to extend deregulation, primarily in the context of new accountability systems.

Extension of Deregulation

Efforts to move beyond limited waiver programs include broadening eligibility for waivers, the charter school movement (and similar attempts to provide blanket deregulation to participating schools) and performance-based accountability systems that encompass broad-based deregulation.

Broadened Eligibility

By 1993, more than 30 states claimed that waivers could be obtained by schools or districts that requested them, noncompetitively and regardless of performance. Request procedures frequently involved proposal/approval steps that illustrated continuing caution on the part of state officials. In many cases, schools were required to specify what was being substituted for the state requirement and how the alternative would be evaluated. In some states, various sign offs are required on waiver requests, like the Texas requirement for faculty, administrator, and board support. Waivers on request coexisted with experimental or pilot programs explicitly incorporating waivers, like Washington's Schools for the 21st Century, in a number of states. There are also a few states, like Utah, which still restricted waivers to pilot programs. Only six states did not report any waiver efforts beyond the traditional approach of making exceptions for schools facing emergencies like natural disasters. Clearly states are broadening waiver use, most notably by permitting any school to make requests. Whether and how schools are taking advantage of these opportunities is harder to discern. While in some states hundreds of schools applied (e.g., in Kentucky 400 applications for experimental courses were received in one month), there were also states where only a handful of schools applied (e.g., by 1993 eight Iowa schools had requested exemptions as part of overall improvement plans).

Charter Schools

As of August 1994, 11 states had charter programs and a number of others were considering them (Bierlein and Mulholland 1994; Center for Policy Studies 1994). Although the specifics vary considerably, the programs share the idea of substituting accountability for outcomes for regulations about practice and process. Charter schools operate on contracts with sponsoring authorities (e.g., local school boards, state boards) that specify outcomes and how they will be measured. In return, the charter may be freed from many, if not all, of district and state regulations. These programs appear more broadly deregulatory than initial state efforts to spur innovation through waivers because—at least in states like Minnesota, California, Georgia, Michigan, and Wisconsin—they provide automatic, blanket relief from much of state code other than health, safety and civil rights. In addition, local policies may also be waived in charter approaches. However, the limited number of charters permitted and

the limited number of applicants in most states suggest that the constraints seen in waiver programs continue to operate: States are timid about broadening wholesale flexibility beyond a small number of schools and deregulation is not a sufficient spur to engage a large number of schools. Arizona, Georgia, and Michigan had no limits on the number of charters that may be sponsored by local boards. But all the other states with charter laws in place by the summer of 1994 severely restricted potential participation, ranging from California's limit of 100 (which is really a very small number for that state) to New Mexico's limit of 5. In Massachusetts no more than .75 of one percent of public school students may participate in charters. As low as these ceilings are, they were not being quickly approached. The number of schools operating or planning to operate charters ranged from 64 in California to none in Georgia, a state which actually had no limit (Bierlein and Mulholland 1994).

New Accountability Systems

Most states are trying to focus their accountability systems on school performance rather than on compliance with regulations. In the past, schools were held accountable primarily for meeting standards about inputs and processes. Through paper reporting and periodic, generally quite infrequent, visits, state agencies monitored appropriate assignment of teachers, class size requirements, existence of mandated courses or curricula, etc. Monitoring of this sort determined whether districts were certified or accredited. Increasingly, states are including performance measures, particularly test scores but also postsecondary behavior and other indicators, in the criteria for accreditation, using either minimum standards or minimum expected gains. According to a Council of Chief State School Officers' survey, as many as 42 states include school-level test scores in public performance reporting (State Assessment Center 1994). A number of states have or plan to have incentive rewards in place for high performance or performance gains, and most states are designing some form of intervention for low-performing schools.

With accountability focused on performance, states should be able to place much less emphasis on, and perhaps even eliminate, input and process criteria used in accreditation. In theory, regulations about program and practice could be removed from the books. Schools would be free to organize and manage instruction in whatever manner necessary to achieve desired outcomes. Whether districts and schools were accredited, rewarded, or punished would rest on those outcomes and not on how schools got there.

States are approaching the deregulatory aspect of new accountability systems in a number of ways. At least three states (Minnesota, Tennessee, and Texas) have or are planning to remove large blocks of rules. In 1993, for example, the Minnesota legislature repealed hundreds of statutes and regulations, ranging from reporting specifications to instructional time minimums to the requirement that each building have a principal, as part of the move toward more results-oriented education. Tennessee removed 3,700 regulations (for example, a number dealing with staff assignment and time on specific school subjects) and made some statutory requirements, such as graduation requirements, regulatory, and

therefore more easily waived. In Texas the legislature sunset the education code as of September 1995. Key policymakers are preparing code revision proposals; a new code will require a rewrite of regulations as well.

In 1993, at least eight states (Alaska, Colorado, Illinois, Kentucky, New Hampshire, New Jersey, Nevada, and South Carolina) reported some form of formal review or advisory process to determine whether existing regulations interfered with new accountability thrusts. Alaska 2000, the state's approach to standards-based reform, included a three-year review of regulations. Illinois was conducting a two-year barrier study; and Kentucky, which incorporated new performance-based guidelines for monitoring in its 1991 reform, was determining what should define high school graduation to see what other changes should be made in the required program of studies. In New Hampshire, minimum standards were almost eliminated but for substantial protest from districts, worried that elimination of mandates would be used by anti-tax forces to defeat local budgets. A "Minimum Standards Committee" then reviewed the situation.

In at least five states (Hawaii, Kansas, North Carolina, New Mexico, and West Virginia) new systems were thought to override the old regulations even though they remained on the books. For example, Kansas has a new outcomes-driven system called Quality Performance Accreditation. Schools must respond to a new set of outcomes in four areas: school improvement; integrated curricular approaches; human resources development; and community-based outreach. Outcomes are judged against a standard, and progress on various indicators is reported. Schools that don't make sufficient progress get a team visit based on the regional accrediting agency model. The emphasis is thus placed on results; while regulations remain in place they are not pressed and they may be waived upon application. At least three states (Indiana, Arizona, and Montana) removed specific regulatory provisions for all districts and schools. Indiana changed the specified percent of time per subject to the number of minutes any time during the day. Arizona repealed the specified minutes per subject, and Montana removed specifications for class size and staffing ratios.

When our survey was conducted in 1993, many other states, including Alabama, Connecticut, Florida, Iowa, Idaho, Louisiana, Massachusetts, and Washington, were anticipating similar changes in accountability that would have implications for regulation. However, policymakers were not finding the transition to such outcome-based accountability systems easy. For a variety of reasons it is hard to remove regulations, and even when they are gone it is not clear to all that the struggle to eliminate them is worth it.

Barriers to Deregulation

The difficulties associated with removing regulation fall into four categories: lack of outcome measures, politics, equity, and non-regulatory constraints.

Lack of Outcome Measures

Policymakers cannot substitute performance-based accountability for compliance-based accountability without adequate measures of performance. For some desired goals, like parental involvement, the outcome measure is not readily apparent. As for student achievement, at the moment the nation is in transition between norm-referenced multiple choice tests and new, sophisticated performance assessments that are of uncertain reliability and validity (see, for example, Koretz et al. 1994; Cronbach et al. 1994). Policymakers face three rather unsatisfying options: hold schools accountable on old measures in which educators are losing faith; use new measures that are unproven; and maintain some aspects of accountability based on compliance to regulations, at least during the transition toward better assessments. While a number of states are choosing one of the first two options (e.g., Mississippi and Kentucky respectively could be counted in these categories), many are simply doing business as usual and postponing the effective date of new accountability systems. For example, Iowa accredits districts based on minimal school standards. A new system of alternate accreditation, based on performance, is anticipated, but each district will have to have its own method of assessing goals, and as a respondent put it, "We're not there yet." Idaho sees itself as in the preliminary stages of moving to a performance-based system encompassing statewide assessments in all subject areas. In 1993, performance assessment existed only in the field of writing, and the state continued to monitor compliance to "the common things like teacher/pupil ratio, facilities...required programs."

Politics

Many regulations represent the political aspirations of powerful constituencies. For example, specialty teachers lobby to have their courses mandated and their expertise protected in rules about the assignment of certified teachers. Deregulation means appealing to such groups on other grounds, such as the potential for overall school improvement, or taking them on in what could be very stressful battle. It's generally difficult to remove past policy. Politicians see their role as making new laws and perceive little electoral credit in the review and streamlining of old laws (Mayhew 1974; Cohen and Spillane 1993; Fuhrman 1993). It's especially difficult to remove old laws that have powerful protectors.

Even more daunting is fairly widespread concern about how troubled districts might abuse deregulation. More broad-based deregulation might mean that districts with the biggest

problems, such as political corruption, are freed from assuring students a minimal level of education. Since those districts are the very ones for whom minimum standards are thought to be essential, the idea of removing them provokes anxiety. Even if corruption is not an issue, for many districts state mandates provide important rationales for local support of education. It is feared that if the mandates were removed, taxpayers, particularly non-minority and non-parent citizens in heavily minority districts, would feel excused from supporting services at adequate levels.

The extent to which such distrust poses barriers to deregulation is demonstrated by the many references to it in interviews with personnel in deregulated schools. While deregulation was fine, and in many cases, terrific for them, it would not be good to broaden eligibility too far. According to a middle school principal from South Carolina, "Regulations are for people who need it. Some would play golf, so not everyone can be deregulated." Elementary teachers at a very progressive South Carolina school, which did not use freedom from the DMP to raise class size, feared that larger classes would be the result in other, less supportive districts. "Lowering that ratio is the most important thing the state does. It's up to the district to keep size down..." and other districts might be so inclined to do so once state mandates were removed. In Texas, a legislative education analyst made a similar point in reference to textbooks as opposed to class size. "I think there is a fear that if you totally decentralize [the textbook selection process] and make it completely local control, there are some districts where you would never know about Darwin."

Equity

Closely related to fears of exempting untrustworthy districts are concerns about removing regulations which assure equal access to services. Many input and process regulations got on the books as part of state efforts to assure that minimal standards exist throughout the state, in districts of varying wealth, location, size, and capacity. In fact, in addition to equalization aid, the establishment of standards about minimal spending, the employment of qualified teachers, course offerings, and similar issues is the cornerstone of state policy to promote equity (Elmore and Fuhrman forthcoming). Even though such regulations have not been very successful in achieving equal services, as is evidenced by widespread school finance and desegregation litigation, it is difficult to argue for their removal in the face of persistent differences in resources, teacher quality, and programmatic offerings among districts. Even those policymakers who acknowledge that minimal standards leave much to be desired as a way to assure equitable schooling are loathe to remove these statements of the state's good intentions.

On the other hand, many believe that schools need flexibility to maximize achievement, particularly on the new, challenging content and performance standards being developed in many states (e.g., NGA 1986 and 1991; Smith and O'Day 1991). Thus, policymakers face a quandary: how can they deregulate while asserting common expectations about the resources necessary to provide equal opportunity. This dilemma is at the heart of recent Congressional

debates about opportunity to learn during consideration of the Clinton Administration's Goals 2000 reform and its proposal for reauthorizing the Elementary and Secondary Education Act. Many in Congress believe that states should not hold schools or students accountable for meeting ambitious new expectations for learning without first establishing "opportunity to learn standards" that specify the resources and practices necessary to give all a fair chance to meet the expectations. Others believe that opportunity to learn standards, particularly federal standards although state policies as well, would mean more constraints on practice just when flexibility is most needed (Elmore and Fuhrman forthcoming).

State policymakers are quick to identify equity concerns as central issues in deregulation discussions. For example, West Virginia is moving toward Policy 2000, a performance-based system of accountability. But its Master Plan, the result of a school finance equity suit, stipulates particular program offerings for all districts and indicates how the state is to fund them. Balancing the input-driven Master Plan and the outcome-oriented Policy 2000 plan is a major challenge. The recent trend toward litigation of school finance cases on adequacy, as opposed to equity grounds, in states such as Alabama and Massachusetts, may lead to enhanced judicial specification of inputs. Remedies may include decisions about which programs are necessary to provide an adequate education, creating a new set of input and practice standards at the same time states are hoping to focus on outcomes.

Non-Regulatory Constraints

As mentioned in the section on early deregulatory efforts, local policies, union contracts, non-educational policies, and other non-regulatory constraints on school activities, pose restrictions which make deregulation less promising, more complex and perhaps less politically appealing. For example, college admission requirements drive high school course offerings and local graduation requirements for most districts. State graduation requirements, which typically confirm rather than lead local practice, could be removed, but without change in college requirements such deregulation might have little effect. Like tradition, which interacts with regulation to rigidify existing practice, such non-regulatory barriers constrain thinking about flexibility. As a result, the local demand for state education code deregulation may be less than a groundswell and hardly a balance to the political and equity concerns that keep regulations on the books.

School funding formulas are an important, and frequently overlooked, source of direction about practice. A number of states have input-driven funding systems where instructional units and staffing ratios determine the amount of state aid. In these circumstances, removal of regulation does little to liberalize the organization and management of instruction. In Delaware, for example, the formula funds instructional units with fixed staffing patterns for various levels of staff (teachers, secretaries, etc.) So in grades one to three, for instance, one teacher is funded for every 19 students and one secretary is supported for twelve units. North Carolina has a similar system. The funding formula supports a Basic Education Program (BEP) which includes a standard course of study. LEAs

must get waivers to reallocate funds among various categories such as "supplies and materials" and "textbooks." Washington is planning to revise its formula as part of its overall movement toward a performance-based system. Right now, the state funds a Basic Education Program of specific staffing levels and a set number of days and hours. While districts do not actually have to spend funds according to the staff allotments, most have adopted the allotment scale. In sum, formulas drive spending in the states in ways that might not be affected by the removal of regulations about time use and staffing.

Summary

Broad-based regulatory flexibility is an important aspect of contemporary reform rhetoric but a difficult goal to achieve. While policymakers in almost every state are interested in extending deregulation, they face technical, political, and even moral problems when they try to de-emphasize input and process regulations. The struggle illuminates underlying tensions in state-local relations which have implications for regulatory flexibility approaches and for state policy more generally.

Persistent Problems of State Policy

The difficulties states have in broadening deregulation to encompass more schools and more aspects of policy reflect a persistent uncertainty about the state role. While states have constitutional responsibility for education, the historic delegation of its provision, and, until the last 20 years, the majority of its financing, to local governments puts states in the odd position of influencing a service over which they have little control (Fuhrman and Elmore 1990). This tension, whether it's called loose coupling or an uncertain principal-agent relationship or whatever term is currently in vogue in the literature, is neither new nor unique to education, of course. But the current reform movement's emphasis on getting all students to meet challenging standards *is* new, as is the notion of focusing on outcomes and deregulating inputs and process. The challenge of achieving more ambitious outcomes by asking governments that already exert relatively little control to give up the few control mechanisms they have is revealing strains in state-local relations that merit examination.

Three problems of state policy and policymaking are highlighted by the deregulation tensions. The first may be called the *bad-apple mentality*. Virtually every state has its share of perpetually troubled districts. Frequently these districts are poor and politically corrupt as well as low achieving. They lack not only the capacity to improve schooling but also the will. Although only a few such districts may exist in any state, many state mandates appear to be made with them in mind. Even though most districts don't need to be told to teach math or reading or to offer instruction for a reasonable number of hours and days, the bad apples do need to be told these things. The tendency is to write statutes and regulations about fundamental services that the troubled districts would not offer if not required, but to set the service requirements low so as not to bother the mainstream districts. As more and more services are considered fundamental, more and more mandates are written. As individual mandates they don't threaten the average district whose service levels exceed requirements, but as a body they seem meddlesome and restrictive to most districts who don't see themselves as needing such detailed directives.

Interacting with the bad-apple mentality is *constituency politics*. With particularly close links to the legislature, educators have had strong influence over the volume and specificity of the policies governing education.

School superintendents and board members are among legislators' most visible constituents; every legislative district includes school districts, and district leaders are sophisticated politicians in their own right who can influence the broader constituencies of parents and teachers in their schools. Only some legislative districts have big hospitals or power plants or concentrations of welfare recipients. But every legislative district has educators, and educators know how to advance their interests. Furthermore, state agencies, which write the regulations that flesh out statutes, are particularly linked to their

constituencies. Most state agency personnel are former local educators; many are still local educators on loan to the state.

Local education policymakers frequently petition their legislators to enact policies, such as aid formulas, favorable to them. The need for each legislator to serve his or her educational constituencies explains why legislatures tend to spread money around, continue to aid wealthy districts, and have great trouble enacting meaningful redistributive policies. While legislators from poor areas want to respond to severe needs with much greater concentrations of resources, they are frequently thwarted by their colleagues who want to assure that each legislator's constituents get some benefits (McDonnell and McLaughlin 1982; Wong 1994).

If an education interest or a district has a particular need, the superintendent and board might turn to the legislature to fix it through law—law that will apply to everyone whether they need it or not. As a Texas legislative staffer put it:

> They say they want local control, but that is where we have a problem with single interests. One member will have one person in their district who wants something and so they draw up bills to address those little things. And they'll say, "we want local control, but I want one thing first" and it happens a lot.

However, since most districts feel that state mandates, particularly unfunded ones, are burdensome, they lobby to get mandates set at minimal levels that won't be too difficult or expensive to reach. So, if the legislature is setting graduation requirements, many legislators will hear from their superintendents about the levels of their own requirements and set the state mandates at a reasonable, non-threatening level.

The constituency politics link between legislators and local educational policymakers contributes to the growing volume of mandates and rules, most of which are set at levels that don't challenge most districts.

The third problem, the *limited toolbox*, is closely related to the other two. Policymakers make a great deal of policy, but it represents very narrow range of types of policy approaches. State policy is mostly mandates, which accounts for the large interest in deregulation, with some incentive programs thrown in for good measure. As described previously, the lack of trust of the bad apples inhibits deregulation, but it also drives state policy in the direction of mandates as opposed to other policy options. Because other, better performing districts are not moved by minimal standards mandates, policymakers try to entice them with incentive programs that offer extra funds for the adoption of particular state initiatives.

The over-reliance on mandates and monetary inducements means that other policy tools, such as long-term capacity building approaches and system-changing shifts of authority, are

used less often (McDonnell and Elmore 1987). It can be argued that deregulation, especially in the case of charter schools and other regulatory free zone approaches, is a system-changing approach because it involves wholesale transfers of authority. System-changing in general is controversial political business and occurs relatively rarely; viewing deregulation as a subcategory helps explain why it is so difficult to achieve.

Associated with the narrow range of instruments is narrow thinking about how particular instruments affect educators and schools. While policymakers may have come to expect variability in response, based on the findings of implementation research over the years (see McLaughlin 1987 for a summary), they have not done much to vary policy design in anticipation of local differences.

Differential treatment of districts and schools has increased as the emphasis on performance-based accountability has grown (Fuhrman 1989). Also, shrinkage in state agency capacity has meant that State Education Agencies lack resources to pay attention to all districts (Massell and Fuhrman 1994). But the kind of differential treatment that predominates is fairly rudimentary and clumsy, framed around big, all-or-nothing type choices of instruments: regulate or deregulate; provide more oversight for some districts and free up others; use inducements or not, etc. For example, an inducement (such as a project grant to develop mentor teacher programs) will be offered on the assumption that some districts will respond and others won't, and perhaps with the recognition that the response will be quite varied, but the policy choice is framed in terms of whether or not to use the inducement, not in terms of how to promote mentor teacher programs through varied instruments. The question of how differential incentives might be designed to appeal to different localities and promote the same aim across varied needs and capacities is less frequently asked. Policy is "chunky" or blunt, not particularly subtle or complex. The bluntness seems to pose a particular problem to the ambitious goals of today's reforms. To promote systemic reform, policies are supposed to be both congruent and enabling of school improvement (Smith and O'Day 1991; Clune 1993; Fuhrman 1993). Our findings suggest that they should also be more sophisticated in design and sensitive to variations among districts and schools, as we elaborate in the section on policy implications to follow.

Policy Implications

Our findings about the obstacles to deregulation and the continuing political tensions shaping the debate suggest several implications for policy and practice.

• Deregulation is one of many policy approaches to enabling school improvement. Since schools use it as a resource, it should be viewed as one component of a variety of supports and motivating elements states and districts can provide. For example, access to knowledge and to resources that free up time are clearly as important as is the freedom to use these assets creatively.

• Deregulation might function most effectively in systems that place emphasis on continual improvement in performance. The relatively successful schools currently eligible for deregulation see little reason to change to do things better. Perhaps they operate under bipolar accountability systems (you're accredited or you're not) that cease to move them once they've passed a certain standard. Or it may be that the accountability system rewards relatively traditional practice (e.g., progress on basic skills oriented standardized tests), so changing practice might actually threaten a school's status. But if the accountability and incentive structures were to promote continual progress, schools could be recognized for growth and change no matter how their performance compared to an absolute standard and all schools might have greater reason to use deregulation to make changes.

• Developing good, credible, legitimate assessment measures is a high priority. Much current policy activity rests on the availability of good outcome measures. In the absence of good assessment tools, efforts to revise accountability and to create more regulatory flexibility are stymied.

• Not all input and process regulations can be eliminated. In addition to concerns about equity, political forces promote regulation. If all regulations were eliminated, many would find their way back on the books over time. Instead of eliminating regulation, policymakers might think about rationing regulations. Developing criteria for rationing would force deliberation about the relationship between regulation and practice and between equity goals and current policy tools. The criteria could serve as boundaries to prevent haphazard reintroduction of input and process regulations over time.

• Policymakers need a broader toolbox of policy approaches. This means less reliance on mandates and incentives and the bundling of a variety of instruments to achieve particular goals. If a goal is important, the range of local response might be anticipated through the use of a variety of instruments that speak to the distribution of local needs, priorities and capacities. For example, policymakers typically treat

the problem of scaling up from a few innovative sites as an educative endeavor and see their role as providing other schools time and opportunity to learn from model sites. But not everyone responds to the enticement of greater knowledge; if the goal is important enough, other options, eventually including mandates and sanctions, might be warranted (Elmore 1994). Developing complex, differentiated policy approaches is itself a highly sophisticated endeavor which might require more capacity than many state legislatures or agencies possess. But since many current policy approaches are "wasted" because they aim at universal results but are relevant only to a narrow band of districts and schools, the current capacity used to develop and implement these limited approaches is also somewhat squandered.

• Approaches must be developed to correct the persistent difficulties of perennially failing schools. Otherwise, many policies will continue to be made with these recalcitrant and/or severely disadvantaged places in mind. New approaches to problem schools, such as closing and reconstituting schools and offering parents other choices, merit careful study. So do policies, like Kentucky's new laws on personnel practices, that limit patronage and nepotism.

A final implication cuts across all the others. The system must improve the way it learns from past efforts, be they efforts to deal with failing schools or deregulatory experience. This study provides an interesting puzzle about research and system learning. While current efforts to broaden deregulation (e.g., charter schools) might be interpreted as signs of learning about the modest effects of early, limited deregulation programs, we found few attempts to learn from the limited programs within the specific states studied. In the early years of the program, the South Carolina education agency explicitly did not track developments in Flexibility Through Deregulation because it wanted to convey a "no monitoring" stance. And in Washington, many 21st Century Program coordinators did not think that waiver use experience was a major factor in the formation of the state's new standards-based reform system. Instead, national consultants and the business community strongly influenced the deliberations of the commission recommending the reform strategy. It is clear that much more study and attention must be paid to the political, technical and ethical issues influencing decisions about regulation. Without such analysis, deregulation is likely to continue to be fairly unattainable in the ideal, and disappointing in reality.

References

Bierlein, L., and L. A. Mulholland. 1994. *Charter Schools: A Glance at the Issues*. Tempe, AZ: Morrison Institute for Public Policy.

Carnegie Forum on Education and the Economy. 1986. *A Nation Prepared: Teachers for the 21st Century* (The Report of the Task Force on Teaching as a Profession). New York: Carnegie Corporation.

Center for Policy Studies. 1994. *(A Start on) A Directory of Persons Interested in 'Charter' Laws*. Saint Paul, MN: Author.

Clune, William A. 1993. "The Shift from Equity to Adequacy in School Finance." *The World and I, 8*(9), 389-405.

Cohen, David K., and James P Spillane. 1993. "Policy and Practice: The Relations between Governance and Instruction." In S. H. Fuhrman (ed.), *Designing Coherent Education Policy: Improving the System* (pp. 35-95). San Francisco: Jossey-Bass.

Corcoran, Thomas. 1995. "Transforming Professional Development for Teachers: A Guide for State Policymakers." Washington, DC: National Governors Association.

Cronbach, L. J., N. M. Bradburn, and D. G. Horvitz. 1994. *Sampling and Statistical Procedures Used in the California Learning Assessment System*. Report of the Select Committee. Palo Alto, CA.

Elmore, Richard F. 1994. "'Getting to Scale' with Good Practice." Paper presented at the CPRE Research Forum on Incentives in Education, Washington, DC, May 24-25, 1994.

Elmore, Richard F., and Susan H. Fuhrman. Forthcoming. "Opportunity to Learn and the State Role in Education." *Teachers College Record.*

Fuhrman, Susan H. 1993. "The Politics of Coherence." In S. H. Fuhrman (ed.), *Designing Coherent Education Policy: Improving the System* (pp. 1-34). San Francisco: Jossey-Bass.

Fuhrman, Susan H. (with Patricia Fry). 1989. *Diversity Amidst Standardization: State Differential Treatment of Districts*. New Brunswick, NJ: Rutgers University, Center for Policy Research in Education.

Fuhrman, Susan H., and Richard F. Elmore. 1992. *Takeover and Deregulation: Working Models of New State and Local Regulatory Relationships*. New Brunswick, NJ: Rutgers University, Consortium for Policy Research in Education.

Fuhrman, Susan H., and Richard F. Elmore. 1990. "Understanding Local Control in the Wake of State Education Reform." *Educational Evaluation and Policy Analysis, 12*(1), 82-96.

Fuhrman, Susan H., Patricia Fry, and Richard F. Elmore. 1992. *South Carolina's Flexibility Through Deregulation Program: a Case Study*. New Brunswick, NJ: Rutgers University, Consortium for Policy Research in Education.

GAO (General Accounting Office). 1994. *Regulatory Flexibility in Schools: What Happens When Schools Are Allowed to Change the Rules*? Washington, DC: Author.

GAO (General Accounting Office). 1993. *Systemwide Education Reform*. Washington, DC: Author.

Hetrick, Beverly. 1994. *Effects of State Deregulation on Federally Funded Educational Programs*. Pape prepared for the U.S. Department of Education, Washington, DC.

The Holmes Group. 1986. *Tomorrow's Teachers: A Report from the Holmes Group*. East Lansing, MI: The Holmes Group.

Koretz, Daniel, Edward Deibert, and Brian Stecher. 1994. "The Vermont Portfolio Assessment Program: Findings and Implications." Washington, DC: RAND Institute on Education and Training.

Little, Judith Warren. 1993 "Teachers' Professional Development in a Climate of Educational Reform." *Educational Evaluation and Policy Analysis, 15*(2), 129-138.

Massell, Diane, and Susan H. Fuhrman. 1994. *Ten Years of State Education Reform, 1983-1993: Update with Four Case Studies*. New Brunswick, NJ: Rutgers University, Consortium for Policy Research in Education.

Mayhew, D. 1974. *The Electoral Connection*. New Haven, CT: Yale University Press.

McDonnell, Lorraine M., and Richard F. Elmore. 1987. "Getting the Job Done: Alternative Policy Instruments." *Educational Evaluation and Policy Analysis, 9*(2), 133-152.

McDonnell, Lorraine M., and Milbrey W. McLaughlin. 1982. *Education Policy and the Role of the States*. Santa Monica: RAND.

McLaughlin, Milbrey W. 1987. "Learning from Experience: Lessons from Policy Implementation." *Educational Evaluation and Policy Analysis, 9*(2), 171-178.

Mohrman, Susan Albers. 1994. "High-Involvement Management in the Private Sector." In Susan A. Mohrman and Priscilla Wohlstetter (eds.) *School-Based Management: Organizing for High Performance* (pp. 25-52). San Francisco: Jossey-Bass.

National Governors Association. 1991. *From Rhetoric to Action: State Progress in Restructuring the Education System*. Washington, DC: Author.

National Governor's Association. 1986. *A Time for Results*. Washington, DC: Author.

Picus, Lawrence O., Linda Hertert, and Amy Van Kirk. 1993. "Texas Core Report." Background paper prepared for the Consortium for Policy Research in Education, New Brunswick, NJ.

Purkey, Stuart C., and Marshall S. Smith. 1983. "Effective Schools: A Review." *Elementary School Journal, 83*(4), 428-452.

Smith, Marshall S., and Jennifer O'Day. 1991. "Systemic School Reform." In S. H. Fuhrman and B. Malen (eds.), *The Politics of Curriculum and Testing* (pp. 233-267). Bristol, PA: Falmer Press.

State Education Assessment Center. 1994. *State Education Accountability Reports: Results of CCSSO Survey* (Draft). Washington, DC: Author.

Washington State Board of Education. 1993. *Report to the Legislature on Schools for the Twenty-First Century Program* (pp. 13, 126). Olympia, WA: Author.

Washington State Senate. 1987. *Senate Bill 991*, 1987: S991, sec 109. Olympia, WA.

Wong, K. K. 1994. "Governance Structure, Resource Allocation, and Equity Policy." In Linda Darling-Hammond (ed.), *Review of Research in Education* (pp. 257-289). Washington, DC: American Educational Research Association.

Appendix A

Deregulation Study Protocol
Revised Again Draft- April 1993

Hello, my name is _____ and I am calling from New Jersey from the Consortium for Policy Research in Education. Do you have about 45 minutes to answer a few questions for our study on changes in state regulations. Do you have questions before we begin? [Confidentiality Assurance]

1. Does [your state] treat different systems and schools differently under state regulations? **[Any documents]**
   – Why?
   – How did this get started?
   – How does the process work? (e.g., lack of time to do all districts, better targeting of resources, etc.)
   – What do you think are the effects of these waivers or increased oversight efforts? Do you have a way of judging the effects?

2. How would you describe your approach for accrediting/certifying systems or schools: Do you accredit schools based primarily on performance (outcomes) or on the existence of certain school programs or practices? **[Any documents]**
   – Have you changed the focus recently? Or, do you plan to change the focus?
   – When/how was the change started? If a new system, what is the timeline for phasing it in?
   – How does it work? Are systems or schools the focus of accreditation?
   – What are the rewards/sanctions for this system?
   – What do you do with low-achievers?

2A. Have you identified existing state statutes, regulations, or rules which inhibit your ability to plan and/or implement components of an education reform effort?
   Yes ___ No____
   – If so, what are they?

3. Has [your state] removed any regulations having to do with how schools operate [e.g., staffing/certification, class size, time in schedule and subjects]? Are there plans to do so? If so,
   – Have you? For whom? Which regulations?
   – How is this implemented?
   – How did this change get started? How were decisions made about which regulations were removed? Can you tell me what criteria were or will be used to make decisions about regulatory streamlining?

4. Does [your state] have provisions for waivers from state regulations?
   – How do they work?
   – What areas are eligible for waivers?
   – What has been the level of participation?
   – Has the issue of delivery standards been raised? What assurances are needed for equity? What is known about how and to what effect waivers have been used?

5. To what extent do waivers or deregulation apply to special programs for students with special needs? Are there any distinctions between how their programs are treated and how other education regulations/programs are treated?
   – Compensatory Education
   – Special Education
   – Dropout, Health, Pregnancy
   – Bilingual/LEP
   – Migrant
   – Vocational Education
   What are the exact provisions about regulatory flexibility with these programs?

6. Do you permit blending or mixing of funds for projects serving different student needs? To what extent and in which ones? [e.g., mainstreaming, or school-wide projects]

7. Does federal regulation support or inhibit state reform efforts? Deregulation efforts? Which ones inhibit? Which ones support?
   – How do you distinguish federal program requirements from yours in the same area? [e.g., Comp. Ed., Chapter I]

8. What changes in federal special needs program regulations would you recommend and why? [e.g., for at-risk students changes in: assessment, staff development, teacher training, curriculum and materials].

9. Are you reorganizing the SEA to correspond to a deregulatory approach?